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ABSTRACT

The use of seniority in current school layoff and transfer practices and the impact of seniority provisions on school operations are examined in this paper. The data for the study came from two sources: interviews with teachers, principals, union leaders, and district administrators in four school districts (drawn from a national sample) facing enrollment decline and budgetary reductions; and a review of teacher contracts in force in 60 Massachusetts school districts. The paper first discusses the arguments for and against using seniority as a major criterion for actions affecting employees. Explored next are effects, costs, and benefits of seniority policies on teacher layoff, transfer, and bumping in the four districts where educators were interviewed. The role of seniority in industry's employment practices is considered next, for purposes of comparison. The report then identifies the major elements of contract provisions relating to seniority, including criteria for layoffs, layoff units, bumping rights, and other relevant educational factors. The document closes with a clarification of the differences between unions' and teachers' views on seniority rules and an assertion that it is possible to design seniority provisions that do not conflict with the interests of education. (PGD)

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SENIORITY AND SCHOOLS

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SENIORITY AND SCHOOLS

> It is doubtful whether any concept has been as influential, pervasive, and troublesome in collective bargaining as that of seniority.[1]

Seniority is fundamental to unionism. The expectation that employees with longer service deserve special treatment has moved industrial workers to organize, to bargain tenaciously, and even to strike.[2] With the advent of collective bargaining for teachers, seniority has found its way into educational contracts as well, to the alarm of those who consider seniority-based layoff and transfer practices inimical to quality education.[3] Critics of seniority believe that in industry, where skills are specified, tasks are differentiated, and work can be closely supervised, seniority may be acceptable. But in education, where teachers' responsibilities are complex, work is rarely inspected, and students respond to subtle differences in a teachers' competence or enthusiasm, seniority is inappropriate. What's good for General Motors may not be good for the schools.

Many school management negotiators have resolutely resisted seniority and defended administration's right to make layoff and transfer decisions on the basis of performance. However performance-based practices are difficult to administer, and district officials often eventually rely on seniority by default.[4]

Education does present needs that cannot be met by the blind application of straight seniority rules, but seniority systems can also be structured in many different ways. Over the years, industry has adapted seniority to fit the particular

demands of specialized enterprises. Education is only beginning to do so.

This paper examines the use of seniority in current school layoff and transfer practices; it assesses the impact of various seniority provisions on school operations; and it explores the possibliity that seniority provisions could be negotiated that serve educational interests and are acceptable to teachers.

A Method of Inquiry

Data for this paper were collected in two stages. First, as part of a larger study of the effects of teacher unionism on schools, interviews were conducted in 1979 and 1980 with 294 district administrators, union leaders, principals, and teachers in a diverse national sample of six school districts.[5] Four of these districts that were in the process of reducing staff provided the opportunity to investigate the impact of various reduction in force provisions on their schools. Table I presents comparative information about these four districts.

Second, teacher contracts were gathered from 60 Massachusetts school districts in an effort to identify the range of ways in which local school committees and unions settle the reduction in force issue in negotiations. Massachusetts school districts are currently contending with substantial enrollment declines and severe budget cuts due to state restrictions on local tax levels. Therefore most districts have addressed the issue of reduction in force with some urgency. Also, because Massachusetts state laws do not specify how teacher layoffs must proceed,

TABLE I

	Type	Enrollment	Economy	Student Composition	Affiliate	Number of Strikes
District A	Urban	17,000 Declining	Declining	Predominantly Black	NEA	Five
District B	Suburban	18,000 Declining	Declining	White	AFT	Four
District C	Urban	9,679 Declining	Declining	White	AFT	None
District D	Urban	240,000 Declining	Declining	62% Black 32% White 6% Hispanic	AFT	Three

the districts have been free to devise a variety of local resolutions to the problem. The layoff and transfer provisions of these contracts, which were analyzed and compared in detail, provide the second source of data for the paper.

Seniority vs. Performance

The basic concept of seniority is a simple one -- employees with longer service deserve priority over those with shorter service.[6] However, underlying this apparently simple notion are several assumptions often cited by advocates. The first is that competence increases with experience. Unions argue that practiced welders are better welders, that seasoned teachers are better teachers, and that, therefore, when layoffs are necessary, senior workers should be retained for their expertise. To some extent, both industry and education acknowledge the legitimacy of this claim. Companies seek to retain experienced workers and thus hold down training costs. State tenure laws grant teachers permanent positions after three or four years of temporary employment. School district salary scales assure higher wages for more experienced teachers, even though they may have the same responsibilities as junior teachers.

Second, seniority provisions are said to appropriately reward workers for their loyalty to an employer over time. Unions contend that those employees who have stayed with the company or school district when jobs were plentiful elsewhere

deserve extra security when jobs are scarce. Moreover, because senior workers may find job mobility a problem, they deserve special consideration and protection.

Third, seniority provisions are favored by unions, and often by management as well, because they set forth objective standards by which employment advantages and disadvantages, e.g., overtime, layoffs, can be divided among workers. Length of service, whether it be measured in years, months, days or hours of employment can be documented. The use of seniority rankings to determine employees' relative rights to benefits and privileges limits the influence of patronage politics, satisfies workers that they are being dealt with fairly, and moderates divisive competition among employees.

But for each of these arguments there are counter-arguments. First, competence does not necessarily increase with experience. Beyond some initial period during which workers learn routines, increase efficiency, and improve skills, senior status may not imply greater competence. In fact, in some situations, workers with longer service may be less productive and less fit to perform well in pressured settings. Second, while loyalty may deserve recognition, neither industry nor schools can reward loyalty alone, particularly during financially difficult times when a force of loyal and secure workers may be only moderately productive. Finally, the objective application of seniority rules may upset what racial balance has been achieved during the last decade of affirmative action. The principle of

last hired, first fired is ultimately not impartial if minority workers bear an inordinate share of the layoff burden.

Well-versed in these counter-arguments, opponents of seniority-based layoffs and transfers for teachers argue that school administrators should accurately and evenhandedly assess teachers' relative qualifications, competence, and value to the schools. The first teacher fired should not be the last hired, but the teacher of least merit and worth. However, several factors reduce the likelihood that teacher layoff decisions will ever be made primarily on the basis of performance.[7]

Some state laws require that staff reductions be seniority-based and, therefore, preclude performance-based layoffs. In those states permitting merit layoffs, teacher unions are wary of contract language that might subject job decisions to arbitrary decision-making or patronage politics and consequently, they bargain hard against it. But, even in those districts where performance is specified by contract as a permissible criterion for layoff decisions, it is rarely used. Many school districts have no standardized evaluation practices that provide comparative ratings of teachers. Moreover, many administrators resist ranking staff. Building principals who hold different views about what makes for good teaching evaluate staff according to different standards, often trying to protect their own teachers with high ratings. The performance-based layoff decisions that result, then, are often based on inconsistent assessments of staff from school to school within the same district that cannot stand up in arbitration.

Moreover, school administrators and school boards themselves often prefer the straightforward criterion of seniority to the ambiguous criterion of merit. Although it is frequently necessary for school board members to bargain for performance-based layoffs to satisfy public concerns for accountability, many in practice would prefer to rely on the simple, less troublesome, standard of seniority. School officials who advocate performance-based layoffs seldom seek to base all such decisions on merit, but want to reserve the right to consider factors other than seniority if it seems in their interests or the interests of the schools to do so. However, because such exceptions are often unprecedented, unregulated, controversial, and subject to challenge, they are rarely made. Length of service is ususally the determining factor.

Given the likelihood that most school districts will eventually rely on seniority as the primary, if not sole, criterion in determining teacher layoffs, how is seniority best applied? What is the appropriate, realistic balance of teacher interests and school needs? A brief review of the effects of seniority layoff practices on the schools of four districts will begin to answer those questions.

Seniority Practices and the Schools

Layoffs: Seniority was the sole criterion used to determine layoffs in the four sample districts. In three it was prescribed by state law and in the fourth it had been bargained collectively. In each of these districts, layoff decisions proceeded from the district offices rather than from the school offices, for they

TABLE II

District	Layoff Criteria	Layoff Unit	Transfer and Bumping Rights
District A	Seniority by law	Teaching field	Transfers only to open positions. Requests reviewed by district officials on the basis of seniority, specific professional competencies, experience, co-curricular preferences, and racial balance. Principals may review transfer assignments.
District B	Seniority by law	Teaching field	Transfers only to open positions. "All other qualifications being equal, seniority shall be the determining factor."
District C	Seniority	Certification area	Laid-off teacher may bump junior teacher in any area for which laid-off teacher is certified.
District D	Seniority by law	Unspecified (Current contract includes a no-layoff clause)	Teachers make transfer requests if enrollment declines eliminate positions in schools. Final assignments made by school department. Transfers may not upset racial balance of receiving schools.

were based on district-wide seniority lists drawn up for each teaching field or certification area. For example, all secondary English teachers were placed on the same list in the order of their initial employment dates. When a position in English was eliminated by the district office, the least senior English teacher in the district was laid off. Therefore, whether or not a school itself was experiencing enrollment declines, it might lose a junior teacher.

Transfers: After layoff decisions had been made, a transfer process followed in which teachers whose positions had been cut were reassigned to the openings created by layoffs. This became necessary when the positions that had been eliminated (for example, one in the South School, two in the East School) did not correspond to the positions of teachers who had lost their jobs (one in the North School, two in the West School).

The transfer language of the four contracts, though similar, had some important differences. In District A various factors including length of service were to be weighed by the school department in placing the surplus teacher. In practice, most transfer decisions were made on the basis of seniority. Seniority played a more prominent role in District B where the contract stated that if all teachers' qualifications were equal (and these were minimal paper qualifications), the seniormost teacher applying for a vacancy was entitled to it. In District C vacancies were to be filled strictly according to the seniority of applicants. The transfer provisions in District D, a very large district, permitted displaced teachers to select five

alternative school assignments from which the school department made the final placement. Transfer assignments could not upset the racial balance of the receiving schools. Although these particular assignments in District D were not seniority-based, federal requirements to balance school staffs by race and experience were met by applying complicated contractual seniority rules.

Bumping: Only one contract, that of District C, permitted teachers who had lost their jobs in one teaching area to displace junior teachers in another teaching area. The only restriction on such bumping was that the senior teacher be certified in the second teaching area. Districts A and B permitted laid off teachers to move into new teaching areas only if there were vacancies there. The current contract for District D included a no-layoff clause and therefore, did not address the issue of bumping.

Within these four districts, then, seniority was the determining factor in most staffing assignments. Its use was perceived by those interviewed to have mixed consequences for the schools. It provided equity and order to decisions that otherwise might have been subject to caprice, patronage, and abuse. But it was also said to compromise the quality of staff, to undermine the allegiance of teachers to their schools, and to disrupt the continuity of students' instruction. These benefits and costs will be reviewed briefly.

The Benefits: The perceived benefits of seniority practices were two. First, respondents reported that when seniority

was the determining factor in layoffs and transfers, all teachers were treated equitably. The standards were clear and the decisions were open to scrutiny. Teachers often reported that, while they might think that seniority was of little use as an indicator of competence, they would nonetheless support it as a fair basis for decisions, one that was not subject to influence by patronage or abuse by incompetent or ill-intentioned administrators.[8] One teacher speculated about how things in District B would have been different without explicit seniority procedures.

> There is no question about it; without a strong seniority clause in the contract, the friends of administrators would be employed and it wouldn't matter what kind of job you did. . . . I just don't trust that people would be rewarded for merit in the schools.[9]

Interestingly, many administrators agreed that such teachers' concerns were warranted, that politics and prejudice might prevail if layoffs and transfers were not seniority-based.

A second, and related, benefit of seniority practices was that they minimized uncertainty and established orderly procedures for the troublesome decisions of layoffs and transfers. In school districts of even moderate size, the potential complications introduced by even a small number of pending layoffs could upset and preoccupy many teachers if the criteria and process were unclear. Seniority-based practices reduced uncertainty and competition among teachers, largely because each individual's seniority status was hierarchically ordered and each teacher could anticipate the path and progress of layoffs.

Many argued that such predictable procedures improved teacher morale and, ultimately, instruction. One teacher explained:

> There was a great deal of consternation in the building about the layoff process and how it would affect teachers who were to be transferred involuntarily. Now there's a feeling of relief among the teachers that there's some systematic way to deal with the issue.[10]

Costs: Seniority, though, was said to have its costs. Many noted that because seniority was not necessarily a measure of competence, layoffs based on this standard might reduce the calibre of the teaching staff throughout the district. Some principals regretted the loss of particularly talented or committed junior teachers during layoffs, but they were even more concerned about losing control over who would teach in their own schools as a result of seniority-based transfers. One such principal in District D complained that she could not review the qualifications of teachers to be transferred to her school:

> If I could have one wish, it would be to be able to conduct a thorough interview and to observe potential teachers in my school. I believe that the selection of the staff should be the number one most important responsibility of the principal. If a principal is able to get good teachers in the building, then 99 percent of the other problems will dissolve, and the principal can spend time on improving the program rather than solving one teacher's problems.[11]

In this district, seniority practices presented particular problems for courses requiring particular teaching competencies. For example, one principal told of an advanced mathematics

program that would end with the current teacher's retirement because routine transfer procedures would not provide an appropriately qualified teacher for the course and the principal could not recruit one from another district school.[12]

A second perceived cost of seniority practices was the disruption to classrooms caused by domino sequences of transfers that occurred throughout the school year. For example, one elementary principal told of a particularly outstanding second grade teacher who, as a result of two other transfers in the district, was bumped from her position two days before the beginning of school. She was replaced by a fourth grade teacher from another building. After three weeks of school, the grievance of yet another teacher gave her rights to the second grade position, and so the recently assigned teacher was sent off to another school and replaced by a third.[13] Another principal who recounted a similar situation in her school observed, "From the standpoint of the person who seeks a transfer, I can understand. However, from the standpoint of the class that's settled and ready to go, I wonder how that helps kids."[14]

Some respondents thought that, in addition to compromising the quality of the teaching staff, and disrupting school classrooms with sequential bumping, frequent seniority-based transfers, being the result of rules rather than choice, reduced teachers' allegiance to their schools and principals. Administrators in this study regularly reported that teachers' sense of belonging to a particular faculty and participating in the

educational mission of that school were essential to its success. One principal explained why teachers in his school did many things that were not required by contract: "They feel considerable allegiance toward this building, toward making it the best in the system."[15] Teachers confirmed that such commitment was important. One Plantville teacher explained:

> The loyalty here is to him rather than to the union. If he told us to stay late, why everyone would. People help him out and he's good to others in response. I guess that's not quite kosher as far as the contract's concerned, but we do it.[16]

These informal, interdependent work relationships that developed over time both among teachers and between teachers and their principals were precarious and could be disrupted by frequent reassignments of teachers. In District D where some teachers encountered repeated transfers,[17] one who had been moved three times observed that the reassignments had "unnecessarily upset the schools."[18] For her and others who had encountered sudden transfers, teaching had become more of a job than a vocation. Several teachers explained that because they might be unexpectedly transferred, they would be careful not to become too attached to particular schools. While there were only a few schools in the sample where this was a current problem, a number of principals anticipated that it would become increasingly difficult to manage their schools if the pace of transfers increased.

Seniority, then is a useful standard by which layoff

and transfer decisions can be made because it is an objective standard that protects crucial job decisions from political interference or administrative abuse, and because it lends itself to orderly procedures. But, seniority can be problematic as it is applied in some districts because it provides no control over staff quality, it permits disruptions of ongoing classes, and it undermines the stability of school staffs. From the perspective of the schools, the costs of seniority can be great. But, are they inevitable? Are there ways to apply seniority to the schools that will moderate or eliminate some of these negative effects?

Seniority and Industry

Much of what educators understand about seniority practices is based on what they think goes on in industry, where management is believed to retain little control over employee assignments. In fact, industry has adapted seniority to its particular needs, and collective agreements specify its application in some detail.

Seniority practices in industry are, as Slichter et al. report, "systems by design" in which the interaction of three interdependent factors have been carefully balanced by negotiators. These factors are:

1. The criteria to be used in selecting the employees to be laid off,
2. The unit to be chosen for layoff purposes, and
3. The right of an employee to bump another in lieu of layoff.[19]

In practice, this means that once the criteria for layoffs are determined -- be they a combination of seniority, demonstrated skills, and training, or seniority alone -- negotiators must determine the work unit to which layoffs will apply; e.g. a department, a shop, or a trade. Then, they must define the rights of laid-off workers to displace those with less seniority in other units.

The Criteria: Sometimes criteria other than seniority are applied to industrial layoff decisions. Elkouri and Elkouri explain that some contract provisions are written to:

> serve the basic aims of seniority, while recognizing other factors, which basically involve the 'fitness and ability' of the employee, in determining preference in employment. Such factors may include skill, ability, aptitude, competence, efficiency, training, physical fitness, judgment, experience, initiative, leadership and the like.[20]

Seniority is, however, the prevailing criterion in industrial contracts.

The Unit: Industry has developed several alternative definitions of the work units to which layoffs will apply. Depending on how specialized workers' responsibilities are, such units may be broad, e.g. the plant, or narrow, e.g. a trade or occupational classification. If a company has an excess of machinists, it will not solve its problems by applying plantwide seniority and laying off a junior electrician; instead it must specify layoff units by occupational classification. However, a packing and storage company whose employees could readily

assume a variety of responsibilities might be well served by a plantwide layoff unit.

The Right to Bump: From the management perspective, however, the most important factor in the layoff system is probably the extent to which laid-off employees' can displace workers in other units,for it determines the control management retains over work assignments. Slichter et al. argue that the definition of bumping rights also reveals a great deal about the strength of workers' seniority rights:

> If a firm reports that it lays off workers on a straight seniority basis, one might think that seniority rights were accorded very high emphasis. In fact, the opposite could be true. If the layoff is from the particular job to the street, the use of straight seniority actually means that the seniority rights of an employee are rated relatively low. On the other hand, a system based on both seniority and ability, which allows the worker laid off from his job to bump elsewhere in the department or plant, offers relatively greater seniority rights.[21]

Like the definition of the layoff unit, bumping privileges typically depend on the extent to which specialized skills are required. Bumping rights are likely to be more restricted where particular expertise or experience is required. Some contracts require that employees who seek to displace junior workers in other units have prior work or training in that area. In some cases, the layoff unit includes "a grouping of jobs in an orderly line of increasing skills" and laid-off workers may only bump in the job groups below them. In other cases, layoff units are grouped into zones that encompass jobs with similar

skills and training requirements, so that a laid-off worker from one unit may displace the most junior worker within the larger zone.[22]

Companies typically seek to achieve some balance between prohibiting and promoting bumping. To define narrow layoff units and prohibit bumping outside of those units might mean that employees with long service would lose their jobs while considerably more junior employees retained theirs. Yet, to negotiate liberal bumping rights might reduce "plant efficiency and productivity to the detriment of all concerned." Moreover, unrestricted bumping "could cause extreme uncertainty and confusion to workers who might be required to take a number of different jobs as a result of a single layoff. . . ."[23]

These three factors and their interdependence -- the layoff criteria, the layoff unit, and the right to bump -- comprise industry's layoff system. To the extent that they are carefully considered and structured, they may assure that workers are qualified and satisfied and that the workplace is orderly. How, then, can these examples be applied to schools and teacher contracts?

Seniority In Teacher Contracts

In educational settings, the layoff criteria may be seniority alone or seniority in combination with a number of other factors, such as ability, training, proven performance, the needs of the district, or qualifications. The layoff unit may be defined by employees' certification areas, teaching areas,

departments, or even course specialities. Bumping a less senior teacher in another unit may be contractually prohibited or permitted only if the employee has particular qualifications. As in industry, if officials understand the relationship and negotiate balance among these factors they may better assure the quality and efficiency of teaching and the orderliness of schools.

An analysis of the teacher contracts gathered from 60 local Massachusetts districts suggests that local school districts are only beginning to systematically address the interdependence of the three components of the layoff system. This is probably because negotiators initially assumed that in view of education's special needs seniority would play a minor role in the layoff process, that other criteria such as proven performance or school needs would be decisive in layoff decisions.[24] However, some local districts have designed their layoff systems with attention to the interaction of the factors of layoff criteria, layoff unit, and bumping rights, and many other districts have included some contract language intended to minimize the negative effects of seniority practices on schools. These alternative contract provisions provide some interesting insights into how seniority layoff and transfer systems might be shaped to fit the needs of schools.

The Criteria: Virtually all of the school contracts assign special weight to seniority as a layoff criterion. Some designate seniority as the sole standard to be applied --

"Teachers will be laid off in the reverse order of seniority" -- while others permit seniority to be considered in conjunction with other criteria. Such multiple criteria provisions have three typical formats:

Seniority provided: "Seniority shall govern provided that teacher qualifications and performance are substantially equal."

If equal, Seniority: "When length of service, ability, and qualifications are relatively equal, length of continuous service shall prevail."

Seniority unless : "Length of service will prevail unless the /senior/ teacher has received two unfavorable ratings within the last five years."

or

"Layoffs shall be effected in the inverse order of seniority within a discipline with the exception of those instances where a junior teacher holds a position within a discipline which no other teacher within the discipline is qualified to fill."

Each of these multiple criteria provisions obliges management to prove that some factor other than seniority should govern. School officials must be prepared to demonstrate before an arbitrator that there are "substantial" differences in two teachers' qualifications and performance, that two teachers are "relatively" unequal in ability and qualifications, that a senior teacher's two unfavorable ratings were procedurally correct, or that a senior teacher is not sufficiently qualified to assume a position. Because such judgments and distinctions are difficult to prove,

many districts never initiate them, relying instead on the seniority standard to make choices.

The Layoff Unit: State certification laws restrict the range of layoff units available to local negotiators, for all teachers are legally required to be certified in any area they teach. Therefore, no layoff unit could be so broad as to include all teachers in any district or school. Many of the contracts simply called for separate seniority lists for each certification area, such as elementary, science, English, special education. Other contracts further restricted the layoff units. One listed the following teaching areas as layoff units for social studies teachers: history, geography, and social studies. Another used secondary elective subjects to define even narrower layoff units, for example, general mathematics, algebra, geometry, algebra II, trigonometry, calculus.

Because elementary teachers are certified to teach in grades K-6, some contracts established layoff units that spanned only two or three grades. For example, in one district, the elementary layoff units were restricted to grades K-3 and 4-6.

When a position was to be cut in any one of these designated layoff units, all teachers who held jobs in that unit would be vulnerable. Once the teacher to be laid off was identified (either on the basis of seniority alone or seniority and other factors), that teacher might be entitled to bump a less senior teacher in another unit.

Bumping Rights: There were substantial differences from contract to contract in the bumping rights held by teachers.

Some districts prohibited all bumping outside of a teacher's unit, permitting laid-off teachers to transfer only to vacant positions. Another contract, however, encouraged as much bumping as might be necessary to protect senior teachers' jobs:

> The superintendent will make all transfers from classification to classification which he deems to be reasonable to protect senior teachers. If the Superintendent transfers a teacher from one classification to another in order to protect a more senior teacher, then, in a subsequent year, the Superintendent shall transfer the same teacher back to his original classification if to do so would protect a more senior teacher.

This contract, however, was unusual. More contracts restricted the movement of teachers from unit to unit by specifying minimal qualifications for any teacher who sought to transfer or bump. For example, some contracts required that a teacher have had recent and successful teaching experience in a second unit (from one semester to two years) before being allowed to bump a junior teacher. Other contracts called for recent training in the second subject area. In one district, the teacher was required to have:

> Successfully completed or will successfully have completed at least two 3-credit courses in that area in the two years preceding or one year following the commencement of the new assignment.

A second district required that, in order to be considered qualified for a position in a new area, the teacher "have a minimum of 30 hours in the subject field." Some contracts, such as the following, permitted either training or prior experience to

qualify a teacher for transfer to a new unit:

> Provided his/her seniority permits, that teacher will displace the least senior teacher in a discipline in which that teacher is certified and has taught successfully for one year within the last three years.
>
> or
>
> A teacher may displace the least senior teacher in a discipline for which the teacher is already certified if that teacher has completed two 3-credit courses in that discipline prior to the June first preceding the next school year and takes one 3-credit course in that discipline during that school year.

While most contracts that restricted transfers did so by stating minimal objective standards for qualifications, for example, a specified number of courses or years of experience, others reserved the administrators' right to make those judgments on a case by case basis. One contract from a regional high school was unique in specifying how such judgments would be made:

> The department chair person or coordinator of the potential receiving discipline and the principal shall meet with the teacher requesting the transfer. The purpose of such meeting is to interview the teacher requesting the transfer to determine if that teacher has the minimal qualifications beyond certification to maintain the discipline standards as they presently exist.

In an effort to further clarify how such a decision would be made, the district published a list of minimum qualifications including these:

- Evidence of knowledge of the content area to which the transfer is requested. (In Foreign Language this would include the need for fluency in speaking the target language)

- Demonstrated ability to implement the methodology and techniques currently in practice in the content area to which the transfer is requested.

- Evidence of knowledge and ability to meet all specific needs of the position to which a transfer is requested. For example, a math position that includes one section of computer would require not only knowledge of the content area and how to teach the concepts, but the specific ability to operate the hardware, to write simple software, to manage accounts, to implement security programs, etc.

Other Relevant Educational Factors; Public schools present other special concerns that require attention and that go beyond the definition of layoff criteria, layoff units, and bumping rights.

First, because the school year typically runs from September to June, and because transfers during the course of the year might disrupt instruction, some contracts limit the period during which voluntary transfers and bumping may occur. For example, one bargaining agreement states that "Except for emergency situations, transfers will not occur during the school year." Another sets similar time limits and permits the school department to temporarily fill openings that occur after September with new employees rather than transfers:

> If openings occur during the school year, they will be filled on a temporary basis for the remainder of the school year and if those positions exist for the subsequent school year, they will be included on the list of vacancies.

A third contract also requires that transfers be made before the start of school, and further restricts the timing of transfer requests:

> Teachers being involuntarily transferred shall be considered for a vacant position, at any time up to the first day of school, providing the request is made before a teacher is assigned to such vacant position.

Each of these provisions protects students from abrupt and repeated changes in teachers and instructional methods, and thus assures continuity of instruction throughout the school year.

A second issue of particular concern to educators is the maintenance of the racial balance that has been achieved during the past decade of affirmative staffing efforts. Such gains would be eroded if no constraints were placed on seniority layoffs and transfers. The legal status of layoff provisions that preserve current minority staffing ratios is not yet clear, but several contracts did specify that racial balance and EEOC guidelines would be relevant considerations in layoff decisions.

In one district, school officials required that, after layoffs,

> The staff racial balance standard for the school system as a whole and for each program shall be consistent with and reflect the policy, goals and standards for staff racial balance contained in School Committee policy including the Racial Balance Plan for the ____Public Schools. . . . No department or program can have fewer minority teachers as a result of layoff unless that program continues to meet the standards, requirements or obligations of School Committee policy and law.

While the state court has upheld this school committee's right to take race into account in making layoffs, the issue is currently the subject of continued litigation in federal court.

The Scope of Seniority Systems

There are, then, quite a range of layoff and transfer

systems that are seniority-based. At one end of the spectrum are those sometimes referred to as "straight seniority" systems that specify length of service as the sole layoff criterion, define the broadest possible layoff unit, and permit bumping of junior teachers with no restriction other than the necessary state certification. At the other end of the spectrum are contracts that give priority to seniority, but define narrow layoff units and prohibit or rigidly restrict bumping.

While seniority systems inevitably reduce administrative control over staff assignments, it is possible for a seniority system to be formulated that would provide certain guarantees of staff quality and assure appropriate teaching credentials for specialized curricular needs. Such a contract could restrict disruptions of ongoing classes with time limits on transfer or bumping requests or maintain current levels of minority staffing. It could minimize staff turnover within a school by permitting transfers only into open positions or by requiring substantial qualifications before permitting one teacher to displace another. Whether such seniority systems are successfully negotiated depends first on the foresight of school officials who must design and propose them, and second on the acceptance of such systems by teachers and their unions.

Teacher Interests and Seniority

Management negotiators often assume that union demands for seniority-based layoffs are non-negotiable demands with the full force of the teacher membership behind them. In fact, though

unions often do press for straight seniority systems, teachers do not unanimously support them. Union interests and teacher interests do not necessarily coincide.

In assessing teacher interests on this issue, it is essential to recognize that disputes over layoffs and transfers are fundamentally teacher versus teacher matters. Given that layoffs are necessary, who should go and who should stay? Given an open position, who is entitled to it? Consequently, teachers within any bargaining unit might well be expected to differ among themselves about the appropriate seniority system. Senior teachers might seek broad bumping rights, while junior teachers might prefer that bumping be prohibited. Teachers having multiple certifications might support a contract permitting easy movement from one unit to another, while teachers with course specialties might advocate narrow layoff units and extensive prerequisites for bumping. Any particular contract provision would inevitably limit the options of some teachers while protecting the interests of others. Therefore, it is unlikely that any union could advocate a plan that would fully satisfy its membership.

Moreover, teachers as a group advocate seniority with some ambivalence. Those interviewed in the four district sample emphasized that what they sought in supporting seniority was an assurance of fairness and protection against favoritism and administrative caprice. As one high school teacher said, its use "eliminates the political shenanigans."[25] Virtually no teachers argued that teaching skill could reliably be expected

to increase with years of experience beyond some initial probationary period, and many told of senior peers whose energy and commitment to teaching had waned. Some believed that senior teachers should be entitled to job protections or early retirement incentives, but others said that the quality of schooling should not be compromised because of experienced teachers' special social claims. One Plantville teacher who supported her union's pursuit of bumping rights by seniority explained her position:

> If there was a fair way to do it, to use something other than seniority, then I would say 'Terrific, get rid of it immediately. There's no doubt about it that there's dead wood here. I'm near the bottom of the seniority list and it won't help me, but I think it's important that it be done fairly, and I don't know how it could be done any other way.[26]

Teachers in this study repeatedly emphasized how important job security was to them. When asked what issues they might personally grieve, more teachers responded that they would initiate formal complaints about job security than about any other issue; many said that it was the only issue they might grieve. Notably, though, teachers made it clear that they were not only seeking protection from layoffs, but also protection from involuntary transfers that might result from administrative decisions or bumping. One Mill City teacher explained the importance of maintaining her position:

> It's not very fair if you have a job for a long time. You work and you work and you work and you expect that that kind of loyalty will provide some stability over time in your position. It's not fair if then you are taken

> out of that job and put in another school. . . . If /teachers/ cannot work for the stability of their positions, then they really have nothing to work for.[27]

A Plantville teacher expressed similar sentiments: "I'd do anything in my power to stay in this building."[28]

Finally, teachers saw themselves as having a stake in the quality of their schools and the standing of their profession. If union contracts undermined these, they would ultimately pay. Teachers, as a group, are ambivalent about being union members and are critical of union positions and tactics that compromise the quality of schools and teaching.[29] Some respondents explicitly disapproved of the union's putting individual members' welfare above the welfare of the schools. One Metropolis teacher said, "There's a lack of strength in educational policies. There's too much emphasis on 'me.'"[30]

A review of teacher interests, therefore, indicates that teachers support seniority because it is an objective standard that can be applied to very important decisions. They care very much about their school assignments, are apprehensive about involuntary transfers, and probably, as a group, would not endorse extensive bumping. Finally, their concerns about school quality and professional standards might well make them responsive to management proposals intended to ensure qualified staff for each teaching assignment, as long as the criteria for such judgments were explicit.

Despite the breadth of teacher interests, local unions

often mobilize broad support for strict seniority systems by arousing teachers' fears about the hazards of alternative systems -- political hanky-panky, vague standards, chaotic procedures. In many cases, the administration's past actions can fuel such fears. But to the extert that administrators are trusted for fair dealing and can propose well-designed layoff and transfer systems that are clear, equitable, and satisfy the broad scope of teachers' concerns, teacher interests and educational interests may be simultaneously served.

Confrontation or Cooperation

Teacher layoffs are symptomatic of the current decline in public schooling. Reduced enrollments and economies, factors over which school officials and union leaders have virtually no control, have dramatically limited the growth of school budgets and changed the tenor of collective negotiations. Bargaining, once the occasion for participants both to build bigger budgets and to win higher salaries, has rapidly become a zero-sum game. Scarcity and uncertainty have polarized labor and management and led them to take unyielding stances in an effort to protect their constituencies' interests. Ironically, such hard bargaining may ultimately serve neither side well, for the old adversarial tactics are inadequate to resolve the complex problems of decline.

This is particularly true for the matter of seniority-based layoffs and transfers. While this analysis suggests

that school officials could structure seniority systems that are acceptable to teachers and consistent with good schools, it is unlikely that this can be achieved through traditional modes of bargaining. A good seniority system is necessarily a well-crafted system, shaped with careful attention to the interdependence of layoff criteria, layoff unit, and bumping rights. It is responsive to the employees' needs for job protection and management's responsibility to maintain good schools. It is a system by design rather than default, requiring the commitment and cooperation of both parties. Sloane and Whitney write:

> Perhaps no other phase of the collective bargaining relationship demands so much of company officials and union leaders in terms of common sense, good faith, and reciprocal recognition of the problems of management, the labor organization, and the employees.[31]

If negotiators fail to recognize the importance of jointly resolving this issue, if either side forces concessions, or precipitiously agrees to the other side's demands, or if negotiators simply split the difference between extreme positions in an effort to settle the contract, no such system by design will result. Regardless of who wins the negotiation struggle, it seems unlikely that the schools will be well served.

In order for school officials to propose seniority systems that preserve school quality and are acceptable to teachers, they must understand teacher interests, not simply know union positions or demands. In order for teachers to endorse a seniority system that designates narrow layoff units or includes

constraints on transfers, they must understand the rationale of management and participate in reconciling their personal and professional needs with the needs of the schools.

Such attention to the interests of both sides is not common in collective bargaining, but does, on occasion, occur. For example, a union officer and school official in one of the sample districts recognized the need for cooperation in resolving the issue of bumping. They met informally outside negotiations and devised a system that would prohibit bumping and give priority for transfers to those teachers who had been laid off. The union leader described how they settled the issue:

> The way we arrived at this was certainly not typical of collective bargaining. I could have represented the position of teachers and stuck to it. He could have maintained the position of the school committee and stuck to it. But we probably wouldn't have come up with a model that was satisfactory to both and that met the needs of both sides. I think that's the kind of cooperation that's necessary between the union and the administration if we are really to solve the problems of the schools. I need to protect the interests of teachers; he needs to keep the system running effectively.[32]

In this union leader's mind, cooperative resolution of such issues necessarily occurred away from the bargaining table, outside the formal bargaining process. However, as parties begin to recognize the increased need for cooperative problem-solving, more such efforts may take place within the context of negotiations.

Recently, Fisher and Ury of the Harvard Negotiation Project have discussed collective bargaining within the larger context

of negotiation--the common process by which settlements are reached by couples, legislators, and national leaders as well as contract negotiators. [33] The authors analyze the limitations of traditional adversarial bargaining and advocate instead a process of "principled negotiations" that focusses on the parties' interests rather than positions, and that promotes creative solutions for mutual gain.

Educators, whether they represent labor or management, share many common concerns and can identify many common interests. They are often dissatisfied with the adversarial roles they must assume and the opposition both sides feign in bargaining. The model of principled negotiations is, in many ways, more consistent with educators' styles and interests than traditional adversarial bargaining. They might do well to consider it carefully and to redefine the collective bargaining process as they seek to resolve contract issues during this era of decline.

NOTES

1. Sumner H. Slichter et al., The Impact of Collective Bargaining on Management (Washington, D.C.: The Brookings Institution, 1960), p. 104.

2. "One of the principal purposes for entering into a collective bargaining agreement is usually to secure for the employees the prized rights of seniority. . . . " Cournoyer v. American Television Col, 28 LA 483, 485 (Minn. Supt. Ct., 1957).

3. See, for example, Chester M. Nolte, "How to Tell Which Teachers to Keep and Which to Lay Off, " The American School Board Journal, Vol. 163, No. 6 (June 1976) pp. 28-30.

By contrast, Richard Murnane argues that seniority-based contracts may better ensure equal educational opportunity than performance-based contracts.

Richard J. Murnane, Seniority Rules and Educational Productivity: Understanding the Consequences of a Mandate for Equality, Project Report No. 80-A17 (Stanford, CA: Institute for Research on Educational Finance and Governance, 1980).

4. Susan Moore Johnson, "Performance-based Layoffs in the Public Schools: Implementation and Outcomes," Harvard Educational Review, Vol 50., No. 2 (May 1980), pp. 214-233.

5. Susan Moore Johnson, Teacher Unions and the Schools, (Cambridge, MA: Institute for Educational Policy Studies, 1982).

6. While seniority may be applied to a range of decisions (promotions, room assignments, supervisory duties, course assignments), discussion here will be limited to its use in layoff and transfer decisions.

7. The discussion that follows is based on findings of an earlier study of performance-based layoff practices, Johnson, "Performance-based Layoffs".

8. The fact that many contracts call for ties in seniority to be broken by lot suggests that the criterion is valued for its fairness.

9. Interview with District C teacher, 9/28/79.

10. Interview with District C teacher, 9/20/79.

11. Interview with District D principal, 11/4/80.

12. Interview with District D principal, 11/4/80.

13. Interview with District B principal, 8/9/79.

14. Interview with District A principal,11/6/79.

15. Interview with District B principal, 8/4/79.

16. Interview with District C teacher, 9/20/79.

17. These transfers resulted from both declining enrollments and from collectively bargained procedures to balance school staffs by race and experience. The seniority procedures were complex and called for teachers to be placed on separate seniority lists within the building and within the district. Frequent,successful challenges of seniority rankings led to repeated involuntary transfers.

18. Interview with District D teacher, 11/19/80.

19. Slichter et al.,The Impact of Collective Bargaining, p. 157.

20. Frank Elkouri and Edna Elkouri, How Arbitration Works (Washington D.C.: The Bureau of National Affairs, 1973) p. 568.

21. Slichter et al., The Impact of Collective Bargaining, p. 155.

22. Ibid., p. 161 and 164.

23. Arthur A. Sloane and Fred Witney, Labor Relations, Third Edition (Englewood Cliffs, NJ: Prentice-Hall Inc., 1977) p. 409.

24. Seniority has become the criterion that mattered for several reasons--the dramatic increase in required layoffs, union opposition to the use of unspecified criteria, and arbitrators' reversals of procedurally incorrect performance-based decisions.

25. Interview with District B teacher, 10/5/79.

26. Interview with District C teacher,9/21/79.

27. Interview with District A teacher,12/5/79.

28. Interview with District C teacher, 9/21/79.
These responses are consistent with the findings of teacher stress surveys in Worcester, MA, Tacoma, WA, and Chicaco, IL in which the prospect of involuntary transfers was rated as the highest source of stress.
James J. Collins and Barbara Masley, "Stress/Burnout Report," Share and Exchange: A Newsletter for Teachers, Vol. 8, No. 4 (June 1980) pp. 14-16.

29. Johnson, Teacher Unions, pp. 234-239.

30. Interview with District D teacher, 11/18/80.

31. Arthur Sloane and Fred Witney, Labor Relations, Third Edition, (Englewood Cliffs, NJ: Prentice-Hall Inc., 1977), p. 407.

32. Interview with District B union leader, 9/24/79.

33. Roger Risher and William Ury, Getting to Yes: Negotiating Agreement Without Giving In, (Boston, MA: Hourghton Mifflin Company, 1981).

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